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Patterson, Thuente, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2100

EXAMINER	
CASTELLANO, STEPHEN J	

ART UNIT	PAPER NUMBER
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/960,606
Filing Date: September 21, 2001
Appellant(s): RAUWORTH ET AL.

Bradley J. Thorson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 2, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

Issue 3: Whether claims 4, 5, 8, 9 and 11-15 are unpatentable over McKenzie in view of Przytulla and Hammes and further in view of the admitted prior art within this application.

(7) Grouping of Claims

The rejection of claims 1-15 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,199,570	MCKENZIE	4-1993
4,925,049	PRZYTULLA	5-1990
4,228,122	HAMMES	10-1980

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. This rejection is set forth in a prior Office Action, mailed on February 25, 2004.

Claims 1-3, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie in view of Przytulla and Hammes. This rejection is set forth in a prior Office Action, mailed on February 25, 2004.

Claims 4, 5, 8, 9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie in view of Przytulla and Hammes and further in view of the admitted prior art within this application. This rejection is set forth in a prior Office Action, mailed on February 25, 2004.

(11) Response to Argument

112, First Paragraph, New Matter Rejection

The examiner does not find support for the "single blow molding operation" language added to the claims after the application was originally filed.

Applicant admits that there is no support in the originally filed text and drawings of the present application. Applicant instead refers to Hammes '122 and the incorporation by reference of Hammes.

There is no support for a "single blow molding operation" in Hammes. Hammes does disclose a blow molding operation but the word 'single" is never used to describe this process and the process is not describe as a single, only or exclusive process. To the contrary, in column 2, lines 21-27 of Hammes' specification, the specification describes a process of at least two steps in the molding operation wherein a step of blowing to form and intermediate form of the chimes occurs first, then after blowing, movable parts of the mold are displaced relative to stationary parts to complete the chime.

Applicant argues that there is only one blowing operation. Hammes is inconclusive as to the number of steps to achieve a fully blown drum. There is no indication of the number of blowing operations to achieve the intermediate form of the roller chimes or if further blowing occurs after the chimes are fully formed. It is not clear that one blowing operation is the only blowing operation or that the whole of the closed head drum and chimes are formed together by one blowing operation.

Applicant's statements that "those of skill in the art" would understand "single blow molding operation" by stating "closed head drum" is erroneous. "Single blow molding

operation" and "closed head drum" are completely different phrases. A drum may be capable of being both made by a single blow molding operation and have a closed head drum, but these two terms in no way have the same or even a similar meaning. Applicant's statements are conclusionary and have not been supported by any evidence.

103 Rejection – McKenzie in view of Przytulla and Hammes

Applicant's main rebuttal is based upon the lack of dimensions as disclosed in McKenzie. Applicant's claim 1 states "the distance from the top of the first fitting to the top edge of the top chime is sufficient such that components extending 1 and ¼ inches above the top of the first fitting are below the top edge of the top chime." Applicant sets forth detailed analysis of the known dimensions of Hammes in an attempt to derive a height of a liquid holding portion of the container. Applicant states that this is what the examiner did to derive a height that the chime extends above the fitting and further provides analysis as to why the examiner erred in this analysis. This did not happen.

Place a ruler next to Fig. 2 and measure the height to be 6 ¼ inches, then measure the distance between the top of the fitting to the top of the chime to be ¾ inch. Calculate that the distance between the top of the fitting to the top of the chime is 12% of the overall height. The height is stated to be 20 inches. As drawn in Fig. 2, the distance between the top of the fitting to the top of the chime is 2.4 inches. A characterization of the distance between the top of the fitting to the top of the chime as at least 1 ¼ inches is accurate. It would be a misrepresentation of Hammes to characterize the distance between the top of the fitting to the top of the chime as less than or equal to 1 ¼ inches. For this reason, the 1 ¼ inches limitation of claim 1 is clearly shown.

Re claim 6, a similar analysis of the chime extending above the recessed portion from 0-3 inches is clearly shown by Hammes as this would be measured. The chime extends above the recessed portion 1 ½ to 2 ¾ inches.

Applicant is correct in stating that drawings are not drawn to scale. It would not be appropriate to rely on a drawing for an exact dimension. However, the relative position of the components and their relative sizes are still disclosure and can't be ignored. Clearly, the chime extends above the fittings.

Applicant alludes to the examiner's reliance on common knowledge, common sense and Official notice. There are no such statements in the examiner's final rejection mailed February 25, 2004. The motivational statement "it would have (been obvious) to modify this height by engineering design choice as an increase in chime height creates greater overlap with the bottom of a drum stacked directly thereabove as motivated by an increase in the stability of the stack" sets forth that the engineer is well versed in mechanical design and knows the correct analysis including equations and formula to use in evaluating stability, that is, the engineer is the one having ordinary skill in the art.

103 Rejection – McKenzie in view of Przytulla and Hammes further in view of the admitted prior art

There are no arguments particular to this ground of invention.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
November 3, 2004

Conferees
njn
jfp

Patterson, Thuente, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2100